

JOANN S. BENNETT

IBLA 85-107

Decided May 31, 1985

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application M-60686.

Affirmed.

1. Oil and Gas Leases: Applications: Generally

A simultaneously filed oil and gas lease application which attains priority must be rejected where the applicant fails to submit the executed lease agreement and first year's advance rental payment within 30 days after receipt of notice to do so, even where the applicant has experienced a business disaster during that period.

APPEARANCES: JoAnn S. Bennett, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

JoAnn S. Bennett has appealed from the September 27, 1984, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting her simultaneous oil and gas lease application M-60686, which had attained priority for Parcel MT 411 in the September 1983 drawing. That decision stated, in part:

Your application is rejected as required by regulation 43 CFR 3112.5-1(c) for failure to file the offer and submit the first year's rental in accordance with 43 CFR 3112.6-1(a).

A Notice dated July 27, 1984, requesting return of signed lease forms and first year's rental, was received on Aug. 1, 1984. You were given thirty (30) days from your receipt of the Notice in which to act. The time allowed for compliance has now expired.

Appellant requests reversal of the decision "for compassionate reasons." She is engaged in a family-operated business producing cut roses. Two days following her receipt of BLM's notice to execute and return the lease forms with payment of \$1,864, fire destroyed a \$600,000 greenhouse and \$300,000 worth of roses. Appellant says:

This disaster has required tremendous amounts of time and energy on our part. As of this date [October 23, 1984] we are still struggling to get the greenhouse sealed up and ready for winter production. During this most trying time many things were forgotten and among them was this oil lease matter. We were not aware of the oversight until the letter notifying us of the rejection arrived [on October 3, 1984].

The Board is not unsympathetic. However, it is without authority to order issuance of the lease "for compassionate reasons." The courts and this Board have long and consistently held that failure to file a completed lease offer and/or tender of the first year's lease rental within the prescribed period mandates rejection of the application. Robert D. Nininger, 16 IBLA 200 (1974). In affirming the Board's decision in Nininger, the District Court held, "The regulations \* \* \* are mandatory, and apply to the plaintiff. Said regulations do not permit the consideration of excuses for failure to timely remit payment." Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). See also Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980); Fred William Berger, 81 IBLA 344 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Will A. Irwin  
Administrative Judge

